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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

)

CC Docket No. 95-116

Telephone Number Portability

)

PETITION FOR RECONSIDERATION

BellSouth Corporation, on behalf of its affiliated companies, and by counsel, files its petition for reconsideration of the Commission's decision in the *LNP Cost Recovery Order* to set the PBX monthly number-portability charge per line at nine times the level of the ordinary charge.¹

BACKGROUND

Following enactment of the Telecommunications Act of 1996,² the Commission released a combined *First Report and Order & Further Notice of Proposed Rulemaking (Further Notice)* in this docket to begin implementing number portability.³ The *LNP Cost Recovery Order* addresses, *inter alia*, comments received in response to the *Further Notice* with respect to carriers' ability to recover the costs associated with implementing a long-term database method of number portability (LNP).

Beginning February 1, 1999, rate-of-return and price-cap local exchange carriers (LECs) will be allowed—but not required—to recover their carrier specific costs directly related to

¹ Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order* FCC 98-82 (rel. May 12, 1998), ¶ 145 (*to be codified at* 47 C.F.R. § 52.23(a)(1)(A)(i)).

² The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151, *et. seq.*

³ *Telephone Number Portability*, 11 FCC Rcd 8352 (1996).

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providing LNP through a federally tariffed, monthly number-portability charge that will apply to end-users for no longer than five (5) years, as well as through a federally tariffed intercarrier charge for LNP query services such LECs perform for other carriers.⁴

In this context, the Commission wrote:

We will allow incumbent LECs to assess one monthly number-portability charge per line, except that one PBX trunk shall receive nine monthly number-portability charges and one primary rate interface integrated services digital network line (PRI ISDN line) shall receive five monthly number portability charges. As the Commission observed in the access charge reform proceeding, a PBX trunk provides on average the equivalent service capacity of nine Centrex lines. We set the PBX charge at nine times the level of the ordinary charge because Centrex and PBX arrangements are functionally equivalent. To do otherwise could encourage a large customer to choose one of these arrangements over the other because of the number portability charge, and thus would not be competitively neutral....⁵

The Commission was correct to apply the Centrex-PBX equivalency factor that it developed in its Access Charge Reform docket. The Commission was right to be concerned with artificially discouraging the selection of one service over the other. However, in the Access Charge Reform *Second Order on Reconsideration and Memorandum Opinion and Order*, where the Commission originally adopted the PBX to Centrex 9:1 equivalency factor to prevent the presubscribed interexchange carrier charge (PICC) from affecting consumer choice between Centrex and PBX, the Commission's final rule states that:

The maximum monthly PICC for Centrex lines shall be one-ninth of the maximum charge determined under paragraph (d)(2) of this section, except that if a Centrex customer has fewer than nine lines, the maximum monthly PICC for those lines shall be the maximum charge determined under paragraph (d)(2) of this section divided by the customer's number of Centrex lines.⁶

⁴ *LNP Cost Recovery Order* ¶ 9.

⁵ *Id.* at ¶ 145.

⁶ *Access Charge Reform*, 12 FCC Rcd. 16606, 16641 (1997) *to be codified at* 47 C.F.R. 69.153(g)(1) (*PICC Order*).

The essential difference between the rule adopted in the *PICC Order* and the rule adopted in the *LNP Cost Recovery Order* is that in the *PICC Order* the PBX trunk rate was set to be equal to a standard single business line rate (1FB). Thus, the Centrex rate was one ninth of an individual 1FB rate. This same relationship between a PBX Trunk and an individual line should apply to the number-portability end-user charge. Thus, under the equivalency factor and rules previously adopted by the Commission, if a carrier's monthly number-portability end-user charge were set at \$.72, PBX customers would pay \$.72 for each PBX trunk, and Centrex customers would pay \$.08 for each Centrex line:

	<u>Resid. Line (1FR)</u>	<u>PBX Trunk(1FB)</u>	<u>PRI ISDN</u> <u>(5x1FB)⁷</u>	<u>9 Centrex Lines</u>
Charge	\$.72	\$.72	\$3.60	\$.72

Under the rule adopted in the *Third Report and Order*, such hypothetical arrangements would be charged as follows:

	<u>Resid. Line (1FR)</u>	<u>PBX Trunk</u>	<u>PRI ISDN</u>	<u>1-9 Centrex Lines</u>
Charge	\$.72	\$6.48	\$3.60	\$.72 - \$6.48

As the foregoing demonstrates, the rule adopted by the Commission will inflate the charges to multiline end-user customers of PBX and Centrex services to an unreasonably high level. Because competitive LECs will not have the same magnitude of costs directly associated with the provision of number portability, it is not likely that such LECs will assess end-user charges at all, let alone end-user charges of this magnitude.

⁷ The Commission's calculation of the charge applicable to PRI ISDN is consistent with the approach in the *PICC* proceeding.

The Commission provided no rationale for its promulgation of a rule in the *Third Report and Order* that, although using the Centrex line to PBX trunk equivalency ratio established in the *PICC Order*, applies that ratio in a manner that is completely inconsistent with the way the ratio was applied to set PICC levels in the Access Reform Proceeding. The monthly number-portability end-user surcharge, however, closely resembles the multi-line business customer PICC. In the Access Charge Reform proceeding the Commission determined that, unlike the subscriber line charge (SLC), the multi-line business customer PICC would only contribute, for a limited time, to the recovery of the cost of single-line business and residential loops, which have lower SLC and PICC caps. Because Centrex and PBX services are functionally equivalent in many respects, the Commission determined that it would be inequitable to require Centrex users to cause their presubscribed interexchange carrier customers to bear a significantly larger PICC contribution than similarly sized PBX users.

Similarly, because the monthly number-portability end-user line charge is not intended to cover in any way loop costs, such charges are not truly cost-based. The charge was established by the Commission, rather, as a temporary and optional mechanism for price-cap and rate-of-return LECs to recover some or all of the costs they incurred to provide federally mandated LNP. Indeed, the rationale offered by the Commission for adopting the PICC Centrex Line to PBX Trunk equivalency factor in both the Access Charge Reform proceeding and the LNP Cost Recovery proceeding was identical. Yet, the Commission's new rule requiring LECs that elect to assess the charge to in turn assess nine (9) monthly end-user number-portability charges on each PBX trunk is totally inconsistent with the rule the Commission adopted in the Access Charge

Reform proceeding, artificially inflates the charges end-users will bear, and will artificially discourage a multiline business customer's selection of both service and service provider.

The effect of the Commission's misapplication of its PICC line to trunk equivalency ratio is to force a Hobson's Choice upon incumbent LECs: either impose artificially high charges under the rule as adopted, or attempt to justify charging both sets of multiline subscribers less than the mandated amount and, thus, foregoing the cost recovery opportunity. The first option is inconsistent in that, as shown above, it distorts the market both for multi-line business services and multi-line business service providers. Because state pricing regulation effectively precludes options for number-portability cost recovery for ILECs outside of the federally authorized number-portability end-user charge, foregoing the cost recovery opportunity in order to correct the market distortions created by the rule's "catch 22" unreasonably prevents ILECs from recovering money spent to comply with the federal number portability mandate.

CONCLUSION

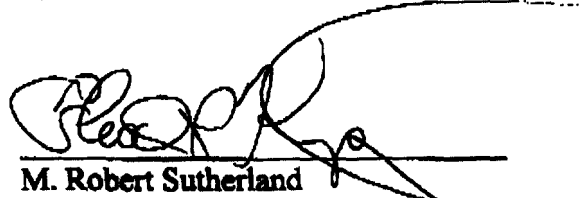
The Commission should reconsider its requirement that incumbent LECs assess nine (9) monthly number-portability end-user charges per PBX trunk. The Commission should instead promulgate a rule similar to that adopted in its Access Charge Reform Proceeding in which each

PBX trunk is assessed one monthly number-portability end-user charge and each Centrex line is assessed one-ninth the PBX trunk charge.

Respectfully submitted,

BELLSOUTH CORPORATION

By its Attorneys:



M. Robert Sutherland
Theodore R. Kingsley

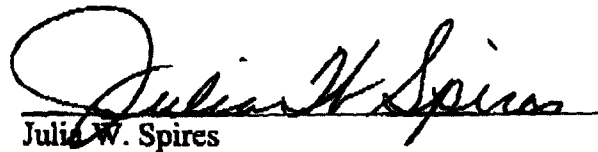
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

(404) 249-3392

July 29, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of July 1998, serviced all parties to this action with the foregoing **PETITION FOR RECONSIDERATION**, reference docket CC 95-116, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


Julia W. Spires

****Secretary**
Federal Communications Commission
Washington, DC 20554

****ITS**
1231 20th Street, N.W.
Ground Floor
Washington, DC 20036

**** VIA HAND DELIVERY**